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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/672,435
Filing Date: September 28, 2000
Appellant(s): GERKEN ET AL.

Robert A. Voigt, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/28/2005 appealing from the Office action mailed 02/08/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-5, 8, 11, 15-28, 33 and 37-45.

Claims 9, 10, 12-14, 31, 32, and 34-36 are allowed.

Claims 6, 7, 29, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 46-57 are withdrawn from consideration as not directed to the elected invention.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. The amendment filed August 16, 2004 that the applicant refers to in his Brief was entered. There have been no amendments filed after the final rejection mailed 11/12/2004 or after the non-final rejection mailed 2/8/2005.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|-----------------|--------|
| 5,010,485 | Bigari | 4-1991 |
| 6,275,200 | Heady et al. | 8-2001 |
| 5,535,407 | Yanagawa et al. | 8-1996 |
| 6,098,879 | Terranova | 8-2000 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 5, 8, 11, 24, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,010,485 (hereinafter Bigari) in view of U.S. Patent No. 6,275,200 (hereinafter Heady).

In regards to independent **claim 1**, Bigari discloses a method of accelerating sales transactions of customers in a retail store (see column 3, lines 12-15), comprising the acts of: reading a customer payment card number (via card reader 24) at a customer checkout accelerator; determining a preapproval amount for the sales transaction (see column 7, lines 21-23); displaying the preapproval sales transaction

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amount to the customer on the checkout accelerator for acceptance (via display 28, see column 7, lines 23-26); transmitting the preapproval amount to an external card services system for approval (see column 7, lines 49-62); and storing the approval amount at a point of sales terminal (via communications line 33) for use in completing the sales transaction; **[claim 5]** determining if the payment card is one or more of credit card (see charge card reader 24), debit card, a customer loyalty card, an electronic/Internet wallet, or an electronic gift certificate; **[claim 8]** manually entering a specific preapproval amount by the customer (see column 7, lines 21-23); and **[claim 11]** printing a sales transaction receipt and a credit or debit voucher (see column 8, lines 49-52).

In regards to independent **claim 24**, Bigari discloses a computer readable medium containing a computer program product for accelerating sales transactions of customers in a retail store that is programmed to complete the steps of claim 1 as described above in detail. Bigari discloses the limitations of **claims 24 and 33** as described above in detail for similar claims **1, 5, 8, and 11**.

Regarding **claims 1 and 24**, Bigari fails to expressly disclose storing the preapproval amount in a preapproval cache at a point of sales terminal. After inputting the preapproval amount via voucher reader 34, Bigari is silent as to where or how the preapproval amount is stored in anticipation of processing by the point of sale terminal.

Heady teaches the use of a point of sale terminal (310) that includes a processor (410) that further comprises cache memory (see column 5, lines 20-25) that assists in executing software routines.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bigari with cache memory associated with the point of sale processor, as taught by Heady, because providing cache for a processor allows the processor to operate more efficiently and at a higher speed because cache memory serves as a high-speed local memory source.

Claims 2-4 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigari in view of Heady as applied to claims 1, 5, 8, 11, 24, and 33 above, and further in view of U.S. Patent No. 5,535,407 (hereinafter "Yanagawa").

Bigari in combination with Heady fail to explicitly disclose the use of a store controller for storing customer transaction data.

Yanagawa teaches the use of a store controller (20) for storing customer transaction data.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bigari/Heady with a store controller as taught by Yanagawa, because store controllers serve as a processing hub for a plurality of POS terminals, therein decreasing the amount of processing power and memory storage capacity required by the POS terminals.

Claims 15-23 and 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bigari in view of Heady as applied to claims 1, 5, 8, 11, 24, and 33 above, and further in view of U.S. Patent No. 6,098,879 (hereinafter "Terranova").

Bigari in combination with Heady fail to disclose a checkout accelerator displaying promotional merchandise that can be added to the sales transaction, wherein some or all of the promotional merchandise can be made available through a hyperlink to one or more Internet web sites.

Terranova teaches the use of personal point of sale system that displays promotional merchandise that can be added to the sales transaction via Internet hyperlinks (see column 10, lines 60-63; see also column 9, lines 5-13). Additionally, Terranova teaches the use of configuring the display using customer preferences (see column 1, lines 42-63; see also column 2, lines 29-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bigari/Heady with promotional display as taught by Terranova, because utilizing the customer display to advertise to customers will increase the likelihood of additional sales while the customer is merely waiting and further provides a higher level of service to the customer.

Regarding **claims 18, 23, 40, and 45**, the Examiner takes Official Notice that is old and well known to track advertisements for billing vendors, because tracking vendor-based advertisements allows the owner of the system to charge outside vendors for advertisements, wherein helping to offset some of the expense of providing the system to the customer.

(10) Response to Argument

On pages 6-7 of the Brief, the applicant argues that Bigari teaches storing a maximum charge amount at a point of sale terminal. However, Bigari teaches an

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“enhanced payment voucher processing apparatus and system wherein the point of purchase register is integrated with payment voucher processing apparatus 10” (See Fig. 5; Col. 9, lines 55-66; and Col. 11, line 66 – Col. 12, line 4). The “enhanced” apparatus, or second embodiment taught by Bigari, does teach storing a maximum charge amount at a point of sale terminal (See Fig. 5; and Col. 8, lines 6-10) when the “point of sale terminal” is interpreted to be the entire integrated enhanced apparatus as shown in **Fig. 5**.

On page 7, the appellant argues that Heady et al. does not teach storing an approval amount. While this may be true, the Heady et al. reference is simply being used to teach that cache memory within a point-of sale electronic cash register was well known in the art at the time of the invention (See Heady et al., Col. 5, lines 7-27). Storing the approval amount at a point of sale terminal is already taught by the primary reference, Bigari, as described in the paragraph above.

The appellant, on pages 7-9, argues that the motivation to combine Bigari and Heady et al. is insufficient because it does not come from one of three sources, one of which is “the knowledge of persons of ordinary skill in the art”. The Examiner’s motivation described in the rejection above, “providing cache for a processor allows the processor to operate more efficiently and at a higher speed because cache memory serves as a high-speed local memory source”, is well known by persons of ordinary skill in the art, and therefore meets appellants own criteria for sufficient motivation.

On page 9, the applicant states that “Merely stating to provide cache for a processor to allow the processor to operate more efficiently and at a higher speed is not

evidence for combining Bigari with Heady". However, it is well known in the computer arts that increased speed and efficiency is desirable in order to access data more quickly and therefore to modify Bigari with Heady to provide a system using cache (a well known speed and efficiency enhancer) to increase speed would have been obvious to one of ordinary skill in the art. Further evidence is not required and the motivation provided by the Examiner is sufficient.

On page 10, the appellant states that Bigari, Heady and Yanagawa do not teach "the act of transmitting the preapproval amount from the customer checkout accelerator to a store controller". However, Bigari teaches the transmission of the preapproval amount to a host (See Bigari, Col. 7, lines 30-35; and Fig. 5, numeral "16") and Yanagawa teaches the use of store controller 20. Thus, the limitation is anticipated by the combination of references.

On page 10, the appellant then states that the references do not teach "placing an entry in a preapproval database if the external card services system approves the transaction amount". Bigari teaches that the host institution maintains a card-holder file (See Bigari, Col. 11, lines 19-27) and periodically updates customer account information (See Col. 10, line 41 –Col. 11, line 7). Yanagawa teaches that it is well known to maintain a customer data ledger file 11A. While the references lack the explicit teaching of a "database", it is well known in the computer arts that the storage of customer data takes place in a "database". Thus, it is inherent that an entry is made in a database when transaction data is updated.

On page 10, the appellant states that the references lack “notifying a point of sales terminal of the approval amount”. Bigari teaches the limitation in for example Col. 7, line 63 through Col. 8, line 5.

On page 10, the appellant states that the references lack “program instructions that determine if the payment card is one (*emphasis added*) or more of a credit card....”. Bigari teaches instructions to determine if the payment card is a credit card (See Col. 7, lines 14-21).

The appellant, on pages 11-13, argues that the motivation to combine Bigari, Heady et al., and Yanagawa is insufficient because it does not come from one of three sources, one of which is “the knowledge of persons of ordinary skill in the art”. The Examiner’s motivation described in the rejection above, “because store controllers serve as a processing hub for a plurality of POS terminals, therein decreasing the amount of processing power and memory storage capacity required by the POS terminals”, is well known by persons of ordinary skill in the art, and therefore meets appellants own criteria for sufficient motivation.

On page 13, the appellant argues that the motivation does not address as to “why one or ordinary skill in the art would modify Bigari to transmit the preapproval amount from a customer checkout accelerator to a store controller”. However, the motivation does precisely address this question by stating, “...therein decreasing the amount of processing power and memory storage capacity required by the POS terminals”. It is well known in the computer art that a decrease in necessary processing power and memory storage will save on the cost of the equipment.

On page 14, the appellant states that the Bigari, Heady and Terranova do not teach “creating a record of any additional items added to the sales transaction; appending the additional items record to a preapproval database entry for the sales transaction”. Bigari teaches that the host institution maintains a card-holder file (See Bigari, Col. 11, lines 19-27) and periodically updates customer account information (See Col. 10, line 41 –Col. 11, line 7). Terranova teaches the use of personal point of sale system that displays promotional merchandise that can be added to the sales transaction via Internet hyperlinks (see column 10, lines 60-63; see also column 9, lines 5-13). While the references lack the explicit teaching of a “database”, it is well known in the computer arts that the storage of customer data takes place in a “database”. Thus, it is inherent in Bigari that an entry is made in a “database” when transaction data is updated, the transaction data including additional items added to the sales transaction (Bigari, as modified by Terranova).

On page 15, the appellant argues that Bigari, Heady and Terranova do not teach “the act of reading the additional items record into a sales transaction record at a point of sale terminal”. However, Bigari teaches making a sales transaction record and Terranova teaches promotional merchandise that can be added to the sales transaction (Terranova Col. 10, lines 60-63; and Col. 9, lines 5-13). The combination of references teaching the limitation in the claim.

On pages 15-17, the appellant further argues that Bigari, Heady and Terranova do not teach “updating a vendor-based tracking database to bill the vendor for

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displaying a vendor advertisement on the customer checkout accelerator when the approval from the external card services system is approved". The applicant argues that the use of Official Notice is improper. However, the applicant has not properly traversed the use of Official Notice, as required by **MPEP 2144.03 (C), first paragraph, lines 3-5**, in any previous correspondence including this appeal brief. In order to adequately traverse the use of Official Notice, the applicant must state "**why** the noticed fact is **not** considered to be common knowledge or well-known in the art". The appellant has not done so and the Examiner continues to maintain that the noticed facts are old and well known. In the first paragraph of page 16, the appellant argues that the Examiner has not considered all words in the claim, specifically, "when the approval from the external card services system is approved", "updating a vendor-based tracking database". This limitation has been considered by the Examiner and is deemed to be an obvious limitation so that the vendor is only billed for advertisements to customers who are capable of paying for the product.

On page 17, the appellant further argues that Bigari, Heady and Terranova do not teach "configuring a selection of additional categories of items....and storing the category selections in a customer loyalty database that is maintained by the retail store". However, Terranova teaches the use of personal point of sale system that displays promotional merchandise that can be added to the sales transaction via Internet hyperlinks (see column 10, lines 60-63; see also column 9, lines 5-13). Additionally, Terranova teaches the use of configuring the display using customer preferences (see column 1, lines 42-63; see also column 2, lines 29-41). Bigari teaches

storing customer information at a host controller, as discussed above. Therefore, the combination of references teach the limitation as claimed.

On pages 17-19 (regarding claims 23 and 45), the applicant again argues the use of Official Notice. The appellant argues that Bigari, Heady, and Terranova do not teach “updating a vendor-based tracking database to bill the vendor for displaying on the customer checkout accelerator a vendor advertisement for merchandise that can be made available through a hyperlink to the vendor’s Internet web site when the approval from the external card services system is approved”. The applicant argues that the use of Official Notice is improper. However, the applicant has not properly traversed the use of Official Notice, as required by **MPEP 2144.03 (C), first paragraph, lines 3-5**, in any previous correspondence including this appeal brief. In order to adequately traverse the use of Official Notice, the applicant must state “why the noticed fact is not considered to be common knowledge or well-known in the art”. The appellant has not done so and the Examiner continues to maintain that the noticed facts are old and well known. On page 18, the appellant argues that the Examiner has not considered all words in the claim, specifically, “when the approval from the external card services system is approved”, “updating a vendor-based tracking database”. This limitation has been considered by the Examiner and is deemed to be an obvious limitation so that the vendor is only billed for advertisements to customers who are capable of paying for the product. The appellant further argues that the Examiner has not provided a motivation to modify Bigari. However, the rejection described above clearly has a motivation (“because utilizing the customer display to advertise to customers will increase the

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likelihood of additional sales while the customer is merely waiting and further provides a higher level of service to the customer"). This motivation coming from knowledge that is well known to persons of ordinary skill in the art. Hindsight was not used by the Examiner for the motivation, as it is well known that advertisements often lead to an increase in sales.

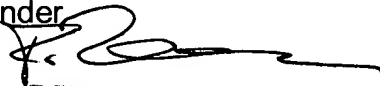
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Florian (Ryan) Zeender


F. RYAN ZEENDER
PRIMARY EXAMINER

5/26/06

Conferees:

Alexander Kalinowski 

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